

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTING : BILASPUR**Original Application No.203/00290/2016**

Jabalpur, this Thursday, the 31st day of January, 2019

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Suyash Kanti Ghosh, S/o Late Shri Sudhir Kumar Ghosh, aged about 63 years, Resident of – Bengalipara, Civil Lines, District – Raigarh (Chhattisgarh) - 496001
-Applicant

(By Advocate – Shri K. Rohan, proxy counsel of Shri Amrito Das)

V e r s u s

1. Central Silk Board, Ministry of Textiles through its Member-Secretary, C.S.B. Complex, BJM Lay Out, Madiwala, District – Bangalore (Karnataka) – 560068.
2. Member- Secretary, Central Silk Board, C.S.B. Complex, BJM Lay Out, Madiwala, District – Bangalore (Karnataka) – 560068.
3. Director, Basic Tasar Silkworm Seed Organisation, Central Silk Board, Satyam Commercial Complex, Link Road, District – Bilaspur (Chhattisgarh) – 495001.
4. Scientist – D, Basic Seek Multiplication and Training Centre, Central Silk Board, P.O. – Boiradar, District – Raigarh (Chhattisgarh) - 496004
- Respondents

(By Advocate – Shri Vivek Verma)

(Date of reserving order : 24.09.2018)

O R D E R

By Ramesh Singh Thakur, JM.

The applicant is challenging the order dated 25.01.2016 (Annexure A-1) passed by the respondents, whereby his

representation for refund of amount of Rs.62,827/- has been rejected.

2. He has, therefore, sought for the following reliefs:

“(8.i) to summon the entire records pertaining to the present case.

(8.ii) to quash and set aside the impugned Order dated 25.01.2016 (Annexure – A/1).

(8.iii) to direct the Respondent Authorities to refund the amount of Rs.62,287/- to the Applicant along with interest @ 12% per annum from the date of recovery till the actual date of payment.

(8.iv) to Award the cost of this Application.

(8.v) to Grant any other relief as may be deemed fit and proper by this Hon’ble Tribunal in the facts and circumstances of the present case.”

3. The brief facts of the case are that the Central Silk Board (CSB) introduced a Central Silk Board Assured Career Progression (CSB ACP) scheme for ground B, C and D employees of CSB, which provides for financial upgradation to the employees who are covered under the said scheme. The scheme envisaged placement of an employee in the higher pay scale/grant of financial benefits through financial upgradation on personal basis and would not require creation of any post for the said purpose. The applicant was considered by the Departmental Promotion Committee and was

granted the benefit of the said CSB ACP scheme w.e.f. 01.09.2007 vide order dated 20.11.2007 (Annexure A-2). Subsequently, vide memorandum dated 10.09.2009 (Annexure A-4), the scheme was withdrawn w.e.f. 01.09.2007 by restoring the Government of India's ACP scheme and the financial benefits amounting to Rs.62,827/- granted to the applicant under the said scheme was directed to be recovered. The said amount was to be recovered from the second installment of Pay Commission arrears due to him consequent upon implementation of Sixth Central Pay Commission.

4. Aggrieved by withdrawal of the scheme, the applicant preferred a representation dated 15.09.2010 (Annexure A-5). However, the respondents, without considering his representation, have recovered the said amount by deducting the same from the second installment of Pay Commission arrears.

5. It is the case of the applicant that some similarly aggrieved persons approached the coordinate Bench at Chandigarh (Circuit at Jammu) in OA No.691/JK/2009 (**Rajinder Kumar Ganjoo & Ors. vs. Central Silk Board & Ors.**). The Chandigarh Bench at Jammu, vide order dated 17.10.2011 though did not interfere with the action of the respondents-Board in withdrawal of the scheme,

however, directed not to recover excess amounts already paid to the applicants therein. The orders passed by the Chandigarh Bench were also affirmed by the Hon'ble High Court of Punjab and Haryana at Chandigarh in WP No.644/2013 on 15.01.2013 and subsequently by the Hon'ble Supreme Court in Special Leave Petition (c) No.16603/2013 on 27.09.2013. Thereafter, the respondents have implemented the orders passed by the Chandigarh Bench of this Tribunal, which were subsequently affirmed by the Hon'ble High Court and Hon'ble Apex Court.

6. The applicant submits that immediately after implementation of the orders passed in the case of **Rajinder Kumar Ganjoo & Ors.** (supra), he again preferred a representation dated 05.03.2014 (Annexure A-10). However, vide order dated 28.08.2014 (Annexure A-11), the respondents have rejected his representation by stating therein that the orders passed by the Courts are not applicable to other cases and the same shall be implemented only in respect of those officials who were party in the above cases.

7. The applicant, therefore, filed OA No.203/00099/2015 before this Bench (Circuit Court Bilaspur), which was disposed of on 16.09.2015 with the direction to the respondents to consider the claim of the applicant for extension of benefit of the decision of

this Tribunal in the case of **Rajinder Kumar Ganjoo etc.** (supra) and pass necessary orders after issuance of notice and affording an opportunity of hearing to the applicant within a period of two months from the date of receipt of copy of the order. In the light of the directions passed by this Tribunal, the respondents granted opportunity of hearing to the applicant on 16.12.2015 and 04.01.2015 and vide impugned order dated 25.01.2016 (Annexure A-1), rejected his claim for refund of amount of Rs.62,827/- by holding that since the applicant was not a party in the matters filed before the Chandigarh Bench of this Tribunal, therefore, he is not entitled to the refund of the aforesaid amount.

8. The main ground for challenging the impugned order is that the respondents have failed to consider the fact that the payment made to the applicant under the CSB ACP scheme was on account of policy decision. Further, the orders passed by the Chandigarh Bench of this Tribunal in the case of **Rajinder Kumar Ganjoo etc.** (supra) has been affirmed by the Hon'ble High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No.644 of 2013 dated 15.01.2013. The Hon'ble Supreme Court of India has also dismissed the Special Leave Petition (c) No.16603/2013 on 27.09.2013 filed by the respondents-Board. Therefore, the ratio laid

down in the case of **Rajinder Kumar Ganjoo etc.** (supra) shall uniformly apply to all the similar cases and cannot be restricted to only to the persons, who were party to the said proceedings.

9. The respondents have filed their reply. It has been submitted that the Government of India notified the ACP scheme vide Office Memorandum dated 09.08.1999, which became applicable to the Central Government employees w.e.f. 09.08.1999. The said scheme envisaged placement in the higher pay scale/grant of financial benefits through financial upgradation to the employees at the interval of 12 and 24 years of service subject to terms of the scheme. During the operation of the scheme, the CSB received number of representations from the employees especially from Group-B, C & D levels regarding the acute stagnation in their grade, lack of promotional opportunities etc. The matter was put up before the committee and the committee recommended time-bound financial upgradation to the Group-B, C & D cadres of the CSB. After taking necessary approval from the Chairman, CSB, the financial upgradation scheme was implemented w.e.f. 01.09.2007 at the Board's office for the entire staff of the Board as per the recommendation of the Cadre Review Committee.

10. Subsequently, the Government of India, pursuant to recommendations of VI CPC, introduced Modified Assured Career Progression Scheme (MACP) vide Office Memorandum dated 19.05.2009 by replacing the earlier ACP scheme of 1999. However, on the basis of the objections raised by the audit to grant of CSB financial upgradation scheme from 01.09.2007 (Annexure R-6), the CSB after careful consideration of all the aspects, decided to give effect to MACP scheme of the Government of India and have withdrawn the CSB financial upgradation w.e.f. 01.09.2007. Therefore, all the employees to whom financial upgradation orders were issued were duly intimated about withdrawal of the CSB ACP scheme and consequential recovery thereupon. The applicant was also informed vide letter dated 10.09.2009 (Annexure A-2) about the reasons for withdrawal of the CSB ACP scheme and recovery of excess amount paid to him under the said scheme. However, he did not challenge the said decision at that time.

11. The respondents have also stated that the applicant is a fence sitter as he has waited for the outcome of the decision in the case of **Rajinder Kumar Ganjoo etc.** (supra) and after a lapse of five years from the date of cause of action, which arose on 10.09.2009, has filed the instant O.A, seeking similar relief as has been

extended to **Rajinder Kumar Ganjoo etc.** (supra). Therefore, the O.A is barred by period of limitation. The applicant took voluntary retirement and he was relieved on 01.12.2011. It has been further submitted by the respondents that since the applicant was not a party to the case of **Rajinder Kumar Ganjoo etc.** (supra), therefore, he is not entitled to the refund of benefit as claimed by him.

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

13. It is an undisputed fact that the CSB had introduced CSB ACP scheme w.e.f. 01.09.2007 in addition to the ACP scheme of Government of India. However, subsequently, it was withdrawn on 05.08.2009 from the date of its implementation, i.e. w.e.f. 01.09.2007. After withdrawal of the CSB ACP scheme, the CSB adopted the MACP scheme notified by the Government of India vide OM dated 19.05.2009 and the benefits available under the MACP scheme were granted to the CSB employees. Consequently, the applicant was informed vide letter dated 10.09.2009 about withdrawal of the CSB ACP scheme and recovery of excess amount paid to him under the said scheme.

14. The case of the applicant is mainly based on the decision in the case of **Rajinder Kumar Ganjoo etc.** (supra) on the pretext of being similarly situated. It is his contention that since he is similarly situated to that of **Rajinder Kumar Ganjoo etc.**, therefore, he is also entitled for the same benefits as have been extended to them.

15. It is relevant to mention that earlier this Tribunal in OA No.203/00099/2015 had disposed of the O.A vide order dated 26.10.2015 after observing that the impugned order of recovery has been passed in violation of principles of natural justice, as the applicant was not afforded any opportunity of being heard. The relevant paragraphs of the order read as under:

“8. Even though the respondents have not filed reply and sought further time to do so but court is not inclined to grant any further time as the fact remains that the issue raised in this case has been clinched by a coordinate Bench of this Tribunal in the case of **Rajinder Kumar Ganjoo** (supra) in which the action of respondents in discontinuing Scheme and re-fixation of pay of employees was not interfered with and upheld but action of the respondents in making recovery from the employees was set aside. The benefit of the decision has been declined to the applicant only on the ground that he was not a party to the proceedings.

9. The law on extension of benefit of a decision to a similarly issued employee is well settled. In the case of **State of Karnataka & Ors. v. C. Lalitha** [(2006) 2 SCC 747], it was held as under:

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently.”

10. The impugned order of recovery has admittedly been passed in violation of principles of natural justice and as such same is declared as illegal and is quashed and set aside.

11. The O.A. is disposed of by issuance of direction to the respondents to consider the claim of the applicant for extension of benefit of the decision of this Tribunal in the case of **Rajinder Kumar Ganjoo** etc. (supra) and pass necessary orders after issuance of notice and affording an opportunity of hearing to the applicant within a period of two months from the date of receipt of copy of this order.”

16. Now, the respondents have passed order dated 25.01.2016 (Annexure A-1) after affording opportunity of hearing to the applicant and have rejected his claim for refund of amount of Rs.62,827/- by stating that since the applicant was not party in the case before the Chandigarh Bench of the Tribunal (**Rajinder Kumar Ganjoo** (supra), therefore, he is not entitled for the benefits as have been extended to thme.

17. It is an admitted fact that the order for withdrawal of the CSB ACP scheme and recovery of excess amount paid to him under the said scheme was communicated to the applicant vide letter dated 10.09.2009. Though the applicant has stated that he had immediately approached the respondents-Board by filing

representation dated 15.09.2009 (Annexure A-5), however, he did not approach this Tribunal for redressal of his grievance against inaction on the part of the respondents at that point of time. It was only after the decision of Hon'ble Apex Court in the case of **Rajinder Kumar Ganjoo etc.** (supra) on 27.09.2013, he had represented the matter to the respondents claiming similar relief, as has been extended to **Rajinder Kumar Ganjoo etc.** (supra).

18. The issue relating to treatment of identically situated persons has already been settled by the Hon'ble Apex Court in the case of **State of Uttar Pradesh and Others v Arvind Kumar Srivastava and Others**, (2015) 1 Supreme Court Cases 347. The Hon'ble Apex Court has categorically held that those persons who did not challenge the wrongful action in their cases 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. The relevant Para 22 of the judgment reads as under:

“22. 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:

22.1 The 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.

22.2 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.

22.3 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.”

19. Thus, merely being similarly situated person, does not confer any right to the applicant to claim similar benefit, as admittedly, he had represented the matter in the year 2014 after final verdict in the case of **Rajinder Kumar Ganjoo etc.** (supra) on 27.09.2013, whereas the cause of action arose to him in the year 2009, when order for withdrawal of the CSB ACP scheme and recovery of excess amount paid to him under the said scheme was communicated to the applicant. Therefore, in view of the law laid down by the Hon’ble Apex Court in the case of **Arvind Kumar Srivastava and Others** (supra), no relief can be granted to the applicant as the doctrine of acquiescence will certainly apply in his case.

20. Besides, we also find from the reply that the decision to withdraw the CSB ACP scheme was a policy decision and there were 626 employees including the applicant to whom the extra payment made to them, was to be recovered, therefore, the decision

to recover the excess paid amount to the applicant arising out of such policy decision, cannot be said to be illegal particularly when the applicant had accepted the same without any protest in the year 2009 and had raised the issue after a delay of almost four years, i.e. after the decision in **Rajinder Kumar Ganjoo's** case in the year 2013.

21. Considering the totality of the case as also the law on the subject, we do not find any illegality in the impugned order dated 25.01.2016. Accordingly, the O.A is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

am/-

(Navin Tandon)
Administrative Member