

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 10873 of 2009
DATE OF DECISION :- August 24, 2015.

Raj Kumar

...Petitioner

Versus

Union of India and others.

...Respondents

CWP No. 11 of 2009

Union of India and another

...Petitioners

Versus

Harcharan Singh Sudan and others.

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Mr. D.S. Rawat, Advocate for the petitioner
in CWP No. 10873 of 2009.

Mr. Karan Bhardwaj, Advocate for the respondents
in CWP No. 10873 of 2009.

Mr. Karan Bhardwaj, Advocate for the petitioners in
CWP No. 11 of 2009.

Mr. D.S. Rawat, Advocate for the respondents in
CWP No. 11 of 2009.

CWP No. 10873 of 2009 and
CWP No. 11 of 2009

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1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. Harcharan Singh Sudan and Pawan Kumar who are respondents 1 and 2 in CWP No. 11 of 2009 filed Original Applications before the Central Administrative Tribunal, Chandigarh Bench, praying for stepping up of their pay at par with their juniors in the light of the order of the Hon'ble Supreme Court dated 2.8.2006 titled as Commissioner and Secretary to Government of Haryana and others Vs. Ram Sarup Ganda and others.

2. Raj Kumar, who is the writ petitioner in CWP No. 10873 of 2009 filed OA No. 170-CH-2008 before the CAT, Chandigarh Bench seeking the very same relief sought for by Harcharan Singh Sudan and Pawan Kumar in their Original Applications.

3. The Original Applications filed by Harcharan Singh Sudan and Pawan Kumar were allowed. Aggrieved by the decision of the Tribunal, Union of India has preferred CWP No. 11 of 2009. But, unfortunately, the Original Application filed by Raj Kumar before a coordinate Bench was dismissed. Therefore, Raj Kumar has preferred separate Writ Petition in CWP No. 10873 of 2009.

4. Learned counsel appearing for the writ petitioners in CWP No. 10873 of 2009 referring to the order dated 26.3.2014 passed by the Hon'ble Supreme Court in Special Leave to Appeal

(Civil) No(s). 4952 of 2014 ***Union of India and another versus All India Postal Account Employees and another*** would submit that All India Postal Account Employees Association and one Mr. E. Kanagraj prayed for steeping up of their pay at par with their juniors before the Central Administrative Tribunal, Principal Bench, New Delhi who having relied upon the decision of the Central Administrative Tribunal, Chandigarh Bench in the said Harcharan Singh Sudan's case granted the relief prayed for by All India Postal Account Employees Association and E.Kanagraj, Senior Accountant. Union of India aggrieved by the above order passed by Central Administrative Tribunal, Principal Bench, New Delhi preferred a Writ Petition in W.P.(C)7421/2013. The Hon'ble Bench of Delhi High Court confirmed the order passed by the Central Administrative Tribunal, Principal Bench, New Delhi. Union of India again took up the matter before the Hon'ble Supreme Court in Special Leave Petition. The Special Leave Petition was also dismissed by the Hon'ble Supreme Court.

5. Learned counsel appearing for Union of India would submit that Harcharan Singh Sudan, in fact, filed earlier OA 768/CH/2002 seeking similar relief but the same was dismissed on 30.1.2003. Review Petition filed there against also was dismissed by the very same Bench on 23.5.2003. Inasmuch as the said order has reached finality, Harcharan Singh Sudan is debarred from raising the very same issue by filing a separate Original Application before CAT,

Chandigarh Bench.

6. As rightly pointed out by learned counsel appearing for the writ petitioner in CWP 10873 2009, the prayer sought for by Harcharan Singh Sudan in OA 768/CH/2002 is different from the prayer sought for by him in OA 96/CH 2007. In OA 768/CH/2002, Harcharan Singh Sudan has virtually sought for striking down the offending condition no. 8 in the ACP scheme formulated by Union of India. But in OA No. 96/CH/2007 Harcharan Singh Sudan has prayed for stepping up his pay at par with his junior K.L. Sethi. Thus, in our view, the prayer sought for by Harcharan Singh Sudan in OA No. 768/CH/2002 is not the same as sought for in OA No. 96/CH/2007. Therefore, the principle of resjudicata does not apply in this case. Even otherwise, Union of India is not supposed to take up such a technical plea being a Welfare State.

7. As rightly pointed out by learned counsel appearing for the writ petitioner in CWP 10873 of 2009, the very same condition no. 8 in the ACP scheme formulated on 9.8.1999 was put to challenge by All India Postal Account Employees Association and E.Kanagraj, Senior Accountant, before the Central Administrative Tribunal, Principal Bench, New Delhi. In fact, the decision arrived at by CAT, Chandigarh Bench in Harcharan Singh Sudan's case was followed by the Central Administrative Tribunal, Principal Bench, New Delhi while granting the relief sought for by All India Postal Account Employees Association and E. Kanagraj. Now, it is the admitted

position that the issues arisen in these Writ Petitions were set at rest, inasmuch as the Hon'ble Supreme Court chose to dismiss the SLP preferred by Union of India as against the judgment passed by the High Court confirming the decision taken by the Central Administrative Tribunal Principal Bench, New Delhi in All India Postal Account Employees case.

8. In view of the above, Original Application filed by Rajkumar is allowed declaring that he is entitled to stepping up of pay at par with his juniors. His pay be fixed in terms of the orders passed by the Central Administrative Tribunal in the connected OA 96/CH/2007. Consequently, CWP 10873 of 2009 is allowed whereas CWP No. 11 of 2009 stands dismissed.

(M. JEYAPPAUL)
JUDGE

(DARSHAN SINGH)
JUDGE

August 24, 2015
p.singh