IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.296 of 2015
Date of Decision: January 09, 2015

Union of India and another .....Petitioners

versus

Central Administrative Tribunal, Chandigarh Bench and another .....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE RAJ MOHAN SINGH.

Present:Mr.P.C.Goyal, Advocate, for the petitioners.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The challenge laid herein is to the order dated 10.12.2013 (Annexure P-6) passed by the Central Administrative Tribunal, Chandigarh Bench, whereby the claim of respondent No.2 for retrospective promotion as Inspector from the year 1991 with notional benefits only, has been accepted second time.

[2] Some of the uncontroverted facts are that respondent No.2 joined Beas Construction Board as a Lab Assistant and on completion of that project, he was declared surplus. The surplus staff was adjusted in other Government departments and the second respondent came to be adjusted as Lower Division Clerk in the petitioner-department w.e.f. 13.12.1989 in the pay scale of Rs.950-1500/-. The second respondent alongwith some other employees approached the Tribunal in the year 1992 claiming higher revised pay scale and

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during the pendency of that Application, he was promoted as Upper Division Clerk in the pay scale of Rs.1200-2040/-. Respondent No.2 passed departmental examination in the year 1996 whereupon he was promoted as Tax Assistant in the year 1999 and then Deputy Office Superintendent on 27.04.2000.

[3] Meanwhile, the Original Application filed by respondent No.2 and others in the year 1992 was allowed by the Tribunal on 09.02.2001 holding him entitled to the revised pay scale of Rs.1350-2200/- w.e.f. 1.1.1986. That judgment of the Tribunal was implemented by the petitioners after the writ petition challenging the same was dismissed by this Court on 31.08.2005.

[4] After the implementation of above-stated order of the Tribunal, respondent No.2 sought consequential benefits and on denial, he alongwith one Tarsem Kumar filed Original Application No.243-CH-2009. The said Original Application was allowed by the Tribunal vide order dated 25.10.2010 with a direction to the petitioners to grant the consequential benefits to respondent No.2 in terms of earlier order of the Tribunal dated 09.02.2001 which was upheld upto the Hon'ble Supreme Court. The above-mentioned order dated 25.10.2010 of the Tribunal was also upheld by this Court on 24.05.2011.

[5] Thereafter, respondent No.2 was re-adjusted as Tax Assistant in the pre-revised pay-scale of Rs.1350-2200/- and upon such retrospective adjustment, he then staked his claim for promotion as Inspector retrospectively from the year 1991. It may be mentioned here that meanwhile respondent No.2 had been promoted as Inspector even in the absence of above stated later service benefits. The Tribunal vide order dated 03.10.2012 in the third round of litigation initiated by

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respondent No.2 through OA No.246-CH-12, accepted his claim with the following directions:-

> "15. In the light thereof, we would allow these O.As and uphold the entitlement of the applicants therein to the relevant monetary benefits w.e.f. 1991. While, however, quashing impugned order dated 13.02.2011 qua the applicants, we would say that the grant of benefit/promotion to the applicants w.e.f. 1991 would be notional in character as they did not function on the promotion post for that duration....."

[6] The petitioners-Union of India and others challenged the above-stated order of the Tribunal before this Court in CWP No.9239 of 2013 raising a plea that the above-mentioned third Original Application filed by respondent No.2 was hopelessly time barred but such a plea was not gone into by the Tribunal. Counsel for respondent No.2 very fairly stated before this Court that the point of limitation was not decided and he agreed that the matter may be remanded to the Tribunal for afresh adjudication. Resultantly, vide order dated 01.08.2013, this Court allowed the writ petition; set-aside the Tribunal's order dated 03.10.2012 and remitted the case for afresh adjudication on all the issues including the point of limitation.

[7] This is how the impugned order dated 10.12.2013 came to be passed by the Tribunal reiterating that the Original Application filed by respondent No.2 was well within limitation and that he was entitled to retrospective promotion as Tax Inspector from the year 1991 though on notional basis.

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[8] We have heard learned counsel for the petitioners who urges that the Tribunal has again committed the same error as the point of limitation has not been decided.

[9] Having given our thoughtful consideration, we are of the considered view that no interference in the order passed by the Tribunal is called for and the matter deserves to be closed for more than one valid reasons.

[10] At the outset, it may be noticed that the Tribunal has gone into the question whether or not the third Original Application filed by respondent No.2 was within limitation and it has pointed out that in para No.3 of the Original Application, respondent No.2 has averred that his petition was within limitation but in their written statement, the petitioners did not contest that claim. The Tribunal has also referred to the documents and the events brought on record by respondent No.2 by way of a miscellaneous application, to hold that the Original Application was as a matter of fact within limitation.

[11] The brief sequence of events noticed by us would unfold that respondent No.2 has been relentlessly pursuing his remedies before one or the other forums, especially the Tribunal. The Original Application filed by him in the year 1992 was allowed in the year 2001 and the cause to claim retrospective promotions accrued in his favour thereafter only. The petitioner-authorities took time in giving effect to the order of the Tribunal as they had challenged the same firstly before this Court and then in the Hon'ble Supreme Court. In these circumstances, the claim put-forth by respondent No.2 cannot be held to be inordinately delayed or barred by limitation.

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[12] So far as the claim for retrospective promotion is concerned, suffice it to say that once the claim of respondent No.2 for grant of pre-revised pay-scale of Rs.1350-2200/- stood accepted w.e.f. 01.01.1986, he was entitled to the consequential benefits, like ante-dated promotions as Tax Assistant and Inspector as per his seniority and availability of slot. The Tribunal has balanced the equities by restricting such claim on notional basis only.

[13] Keeping in view the fact that the parties have litigated in several rounds, we feel that time has come to close these proceedings. The writ petition is accordingly dismissed.

[SURYA KANT]
JUDGE

January 09, 2015
Mohinder

[RAJ MOHAN SINGH]
JUDGE

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