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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7541/2015

% *Judgment dated 10th August, 2015*

UNION OF INDIA & ORS Petitioners

Through : Mr.Rakesh Kumar, CGSC.

versus

ANATH MANDAL AND ORS Respondents

Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

CM APPLS.NO. 14471-72/2015.

1. Exemptions allowed subject to all just exceptions.
2. Application stands disposed of.

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3. The petitioners have filed by the present petition under Articles 226 and 227 of the Constitution of India seeking a direction to quash/set aside the Order dated 29.2.2012 passed by Central Administrative Tribunal, Principal Bench, (hereinafter referred to as '*the Tribunal*'), in O.A.No.2908/2011.
4. Learned counsel for the petitioners submits that while passing the impugned Order dated 29.2.2012 the Tribunal has simply relied upon its earlier decision rendered in the matter titled as *P.C. Chinhara, SO & Others v. Union of India & Others* (O.A.3319/2009), decided by the Tribunal on 13.8.2010. Counsel further very fairly submits that the aforesaid Order passed in *P.C. Chinhara* (supra) (O.A.3319/2009) has been upheld by a Division Bench of this Court in W.P.(C)7526/2010 titled as *Union of India & Ors. v. P.C. Chinhara and Others*, which was decided on

18.11.2010.

5. We have heard learned counsel for the petitioners and also perused the impugned order dated 29.2.2012 passed by the Tribunal. Respondents had approached the Tribunal stating that the respondents are civil employees of Sashastra Seema Bal (SSB), holding the post of Section Officer (SO)/Private Secretary (PS) (excepting one i.e. Applicant No.10 who holds the feeder post of Assistant who is expected to be promoted as 'SO' soon). The Tribunal vide Order dated 13.8.2009 in OA No.3319/2009 declared the stand of the respondents not to grant the Grade Pay of Rs.4800/- (Rs.5400/- after four years) to SOs/PSs as illegal and restored the same to the respondents. The order of the Tribunal was also upheld by the High Court of Delhi vide Order dated 18.11.2010 passed in W.P.(C) 7526/2010 by dismissing the writ petition filed by the Union of India. The respondents in O.A. were aggrieved by the irrational and illegal stand taken by the respondents for grant of Pay Band 2 with Grade Pay of Rs.4800/- (Pay Band 3 with Grade Pay of Rs.5400/- on completion of four years) to only those who were parties in the O.A. 3319/2009 and the respondents have been or were being denied the grade pays as they were not the parties to the earlier litigation.
6. We may note that it has not been disputed before us that the present respondents are identically placed as the respondents in W.P.(C)7526/2010 (except respondent no.10). The Division Bench while dismissing W.P.(C) 7526/2010 has observed as under:

“O R D E R
18.11.2010

1. Undisputed facts are that the cadre of secretarial staff under the Cabinet Secretary was trifurcated and two wings were retained

under the Cabinet Secretary and one i.e. SSB transferred on 'as is where is' basis under the Ministry of Home Affairs.

2. It is also not in dispute that permanent absorption under the Ministry of Home Affairs would mean a change of cadre for the officers deputed under the Ministry of Home Affairs in the form of SSB Unit assigned to the Ministry of Home Affairs and till date no option has been sought for from these persons.

3. It is settled law that an employee in a cadre cannot be permanently absorbed in another cadre without his consent. We hasten to add that it is permissible to merge cadres. But, where there is no merger of cadres it would be impermissible to hive of a cadre by sending some persons to a different cadre, without seeking their option.

4. The Tribunal has returned a finding of fact that the SSB Unit, which was an integral part of the Cabinet Secretary has been not merged with the Ministry of Home Affairs cadre but only administrative control has been given to the Ministry of Home Affairs.

5. Thus, on the first reasoning of the Tribunal that the respondents continued to be in the cadre strength of Cabinet Secretariat and would be entitled to be placed in the applicable pay band requires to be upheld.

6. Thus, we need not deal with the issue of applicability of the ratio of law laid down by the Tribunal in its decision dated 19.2.2009 S.R. Dhir and Ors. Vs. UOI and Ors.

7. Reiterating that learned counsel for the petitioner has not been able to show to us any document as per which employees on the cadre strength of the Cabinet Secretariat were called upon to exercise option for absorption under the cadre strength of Ministry of Home Affairs and further has not been able to show any

integration of the said employees in the cadre strength of the Ministry of Home Affairs, we dismiss the writ petition in limine.

8. We may note that learned counsel for the respondent has made a grievance that the petitioners have deliberately chosen to withhold relevant pleadings before the Tribunal from this Court.

9. It is not in dispute that the respondents who were the applicants before the Tribunal had amended their Original Application to which a counter reply was filed. Rejoinder was filed to the said counter reply. We note that the petitioner has withheld the said pleadings and instead has filed before us the un-amended OA, counter reply filed thereto and the rejoinder filed to the counter reply to the un-amended OA.

10. Be that as it may, we dismiss the writ petition on account of our reasoning hereinabove in paras 1 to 7.

11. No costs.

CM No.14897/2010

Dismissed as infructuous.”

7. We see no reason to take a different view than the view taken in W.P.(C) 7526/2010. For the reasons stated in W.P.(C)7526/2010, present writ petition is without any merit and the same is dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 10, 2015 msr