

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1319 of 2016

DATE OF DECISION: JANUARY 22, 2016

UNION OF INDIA & OTHERS

...PETITIONERS

VERSUS

MRS. POONAM SHARMA & ANOTHER

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE RAJ MOHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. MANISH DADWAL, ADVOCATE FOR THE PETITIONERS.

M. JEYAPPAUL, J.

1. This is an atrocious writ petition filed by the Union of India and others aggrieved by the order passed by learned Central Administrative Tribunal, Chandigarh Bench (for short 'Tribunal') granting relief to the employee who had suffered service benefits on account of administrative inefficiency on the part of the writ petitioners.

2. Respondent No.1 Mrs. Poonam Sharma was senior to a co-employee Sukhwant Singh. Both of them were considered for promotion to the post of Stenographer Grade-II by Departmental Promotion Committee on 30.6.2003. The order of promotion was issued to respondent No.1 only on 2.7.2003, whereas in the case her junior Sukhwant Singh, the order of promotion was issued on 30.6.2003 itself and as a result of which the latter had joined the above promotion post little earlier than respondent No.1. Coming to know of the anomaly in the pay, inasmuch as the said junior

Sukhwant Singh was getting higher pay than that of respondent No.1, she submitted a representation before the writ petitioners on 20.7.2012 for stepping-up of her pay. It was considered and accepted by the writ petitioners vide communication dated 31.12.2012. But unfortunately, the said order was subsequently withdrawn by virtue of the order passed by the writ petitioners on 5.2.2013.

3. It is the contention of the writ petitioners herein that Sukhwant Singh who joined the promotion post on 30.6.2003 got revised pay scale w.e.f. 1.1.2006 with one increment in the unrevised pay scale.

4. The Tribunal having found that there was no reason to deprive the benefit accrued to respondent No.1 on account of anomaly in pay cropped-up due to the faulty issuance of promotion order to the junior in post directed the writ petitioners to accord to respondent No.1 the benefit of stepping-up at par with the junior Sukhwant Singh in terms of Annexures A-3 and A-4.

5. Very novel submission was made by learned counsel appearing for the writ petitioners that as per Rule 22 of the FR and SR Part I, even if a senior joined the higher post later than the junior, for whatever reasons, whereby he draws less pay than the junior, in such cases, senior cannot claim stepping-up of pay at par with a junior.

6. In our considered view, such scripture cannot be quoted by the writ petitioners who had created anomaly by their own folly to deny the service benefit to respondent No.1. The above Rule may apply in a case where promotion was duly given from the date when the employee was

entitled to it, but somehow, on account of some policy/scheme, there was some pay anomaly between the senior and junior employee. But definitely, the above Rule cannot be cited to justify the wrong committed by the writ petitioners which resulted in pay anomaly.

7. Citing Rule 27 of the above Rules, it was submitted by learned counsel appearing for the writ petitioners that subject to any general or special order that may be passed by the President of India, the Authority may grant a premature increment to a Government servant on a time scale of pay, if it has power to create a post in the same cadre on the same scale of pay. It is contended by learned counsel appearing for the writ petitioners that the Chief Commissioner of Income Tax should not have granted premature increment to respondent No.1 unless there was general or special order made by the President of India.

8. Firstly, we fail to understand the context in which the above Rule was cited by learned counsel appearing for the writ petitioners. Secondly, to set right the anomaly referred to by respondent No.1, no order from the President of India is required.

9. It was submitted by learned counsel appearing for the writ petitioners that there had been an enormous delay in approaching the Tribunal by respondent No.1.

10. Firstly, we find that the question of delay had not been raked up during the course of hearing of the Original Application before the Tribunal. Secondly, it is a case where the question of delay raised for the first time before this Court involves mixed question of fact and law. Such a question

should have been raised even at the first instance by the party concerned.

11. Let us also decide whether there is any merit in the above submission that Original Application has been belatedly filed. It is true that respondent No.1 had a grievance as junior co-employee Sukhwant Singh was issued with the order of promotion on 30.6.2003 itself. But the fact remains that she submitted a representation on 20.7.2012 having come to know of the anomaly in salary and the same was positively considered by the writ petitioners which resulted in grant of stepping-up as prayed for by respondent No.1 as per the order passed by the writ petitioners on 31.12.2012. But unfortunately, the said order was withdrawn by the writ petitioners as per the order passed by them on 5.2.2013. The Original Application has been filed by respondent No.1 even in the year 2014. Therefore, we do not find any merit in the submission that the Original Application was barred by limitation.

12. On facts, we find that respondent No.1 never waived her right of step-up of pay. The moment she came to know of the anomaly, she made a representation and got the anomaly rectified. Immediately after the withdrawal of such rectification made by the writ petitioners, respondent No.1 has approached the Tribunal seeking an appropriate remedy. Under such circumstances, we fail to understand the submission made by learned counsel appearing for the writ petitioners that respondent No.1 had elected to waive her right of stepping-up.

13. The reasons assigned by the writ petitioners for issuance of order of promotion belatedly to respondent No.1 was that there was some

administrative exigency and therefore, the order could not be issued to respondent No.1 simultaneously with a junior co-employee Sukhwant Singh.

14. The Court was very anxious to know what actually was the administrative exigency in not despatching simultaneously the promotion order both to the senior and the junior. There was no plausible answer emanated from the writ petitioners.

15. The inefficiency of the officer concerned, in our considered view, in not despatching the order of promotion to all the promotees recommended by the same Departmental Promotion Committee has resulted in the anomaly complained of by respondent No.1.

16. The Tribunal has rightly set right the anomaly by passing the order impugned in this writ petition. We do not find any merit for interference with the above order passed by the Tribunal. The writ petition stands dismissed.

(M. JEYAPPAUL)
JUDGE

January 22, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE