

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 24033 of 2015

Date of Decision: 6.12.2016

Darshan Singh

....Petitioner.

Versus

Union of India and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. T.S. Sidhu, Advocate for
Mr. Vikas Singh, Advocate for the petitioner.

Mr. RTPS Tulsi, Advocate for respondents No.1 to 3.

AJAY KUMAR MITTAL, J.

1. By way of instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 27.4.2015 (Annexure P-5) passed by respondent No.4-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as “the Tribunal”) dismissing OA No. 572/HR/2013 and dated 21.5.2015 (Annexure P-7) whereby the application for restoration of the original application was dismissed.

2. Briefly stated, the facts necessary for adjudication of the instant petition as narrated therein may be noticed. The petitioner was appointed on 4.8.1958 as a Mistry in Jagadhri Railway Workshop. He retired on

31.8.1993. The pay scales of the employees including the Mistries were

revised by the Government of India vide letter dated 4.6.2001. Mistries were granted the pay scale of 1400-2300 + Special Pay of ₹ 100/- whereas Master Craftsman and Junior Engineer were granted the pay scale of 5000-8000. The pay scales were again revised w.e.f. 1.11.2003 and the Mistries were granted the pay scales of Junior Engineer-II. The petitioner became entitled to the revision of pension w.e.f. 1.11.2003 but he was being paid in the pre-revised pay scale as existed prior to 1.11.2003. The similarly situated persons, namely, Agia Ram and others filed OA No. 990/HR/2009 before respondent No.4 for re-fixing their pension on the basis of revised pay scale of 5000-8000. The said OA was dismissed by the Tribunal vide order dated 19.10.2010 against which, Agia Ram and others filed CWP No. 9581 of 2001. This Court vide order dated 4.8.2011 allowed the said writ petition and held that on revision of pay scales and restructuring of Group-C staff w.e.f. 1.11.2003, the petitioners therein were entitled to the grant of this benefit and refixation of pay in the pay scale of 5000-8000. The said order was challenged in SLP No. 19160 of 2012 and the Supreme Court dismissed the said SLP. The petitioner moved a representation dated 3.9.2012 followed by a reminder dated 7.1.2013 to the respondents for refixing his pension in the revised pay scale w.e.f. 1.11.2003. However, the said representation was dismissed by the respondents. Thereafter, the petitioner filed OA No. 572/HR/2012 (Annexure P-1 Colly) before respondent No.4. The said OA was contested by the respondents by filing a written statement dated 11.11.2013 (Annexure P-2 Colly). The petitioner filed rejoinder dated 10.2.2014 (Annexure P-3) to the said written statement. Tilak Raj and others filed an application claiming identical relief as claimed by the petitioner which was allowed by respondent No.4. In the meantime,

Darshan Lal Bali and others claiming similar relief filed OA. The said OA was allowed by respondent No.4. The writ petition filed by the respondents against the orders of respondent No.4 was dismissed by this Court vide order dated 29.1.2015 (Annexure P-4). When the OA of the petitioner came up for hearing on 23.4.2014 before the Tribunal, counsel for the respondents therein stated that an identical OA No. 1376/PB/2012 was decided by the Tribunal on 1.10.2013 and the said order was impugned in CWP No.2105 of 2015 wherein this Court vide order dated 5.2.2014 stayed the order dated 1.10.2013 passed by the Tribunal and requested for an adjournment to await the decision of this Court. The matter was adjourned to 15.7.2014 and thereafter to 2.3.2015. On 2.3.2015, counsel for the respondents placed on record the written arguments and the matter was adjourned to 26.3.2015 and thereafter to 7.4.2015. Again the matter was adjourned to 27.4.2015. The Tribunal vide order dated 27.4.2015 (Annexure P-5) dismissed the case for non-prosecution. Counsel for the petitioner filed an application along with affidavit dated 30.4.2015 (Annexure P-6) for restoration of the OA and the case was adjourned to 21.5.2015. However, the Tribunal vide order dated 21.5.2015 (Annexure P-7) dismissed the application for restoration of the OA. Hence, the present writ petition.

3. We have heard learned counsel for the parties and perused the record.

4. The petitioner was appointed on 4.8.1958 as a Mistry in Jagadhri Railway Workshop and as such retired on 31.8.1993. The pay scales were revised w.e.f. 1.11.2003 and the Mistries were granted the pay scales of Junior Engineer-II. The petitioner was entitled to the revised scale of pension admissible to the retirees after 1996. A similar matter was filed

by Tilak Raj and another which was decided in their favour by the Tribunal and the respondents therein challenged the same by filing CWP No. 2105 of 2014. The petitioner filed OA No. 572/HR/2012. The said OA came up for hearing on 23.4.2014 before the Tribunal, counsel for the respondents therein stated that an identical OA No. 1376/PB/2012 was decided by the Tribunal on 1.10.2013 and the said order was impugned in CWP No.2105 of 2015 wherein this Court vide order dated 5.2.2014 stayed the order dated 1.10.2013 passed by the Tribunal and requested for an adjournment to await the decision of this Court. The matter was adjourned to 15.7.2014 and thereafter to various dates. The Tribunal vide order dated 27.4.2015 (Annexure P-5) dismissed the case for non-prosecution. An application along with affidavit dated 30.4.2015 (Annexure P-6) for restoration of the OA and the Tribunal vide order dated 21.5.2015 (Annexure P-7) dismissed the application for restoration of the OA.

5. The application for restoration of the OA was supported by an affidavit of the counsel wherein it was pleaded that the counsel who had been instructed to appear and argue the matter when reached the Tribunal found that the OA had already been dismissed in default. The Tribunal recorded that there was no adequate explanation for the absence of the counsel on various hearings and had rejected the application.

6. Admittedly, the OA was dismissed in default on 27.4.2015 and the application for restoration of the OA was filed on 30.4.2015. Keeping in view the reasons given in the application for restoration of the OA, which was supported by an affidavit of the counsel and finding the same to be plausible and bonafide, the order dismissing the OA in default deserves to be set aside and decided on merits.

7. Accordingly, the writ petition is allowed and the orders dated 27.4.2015 (Annexure P-5) dismissing the OA in default and dated 21.5.2015 (Annexure P-7) passed by the Tribunal dismissing the application for restoration of the OA are set aside. The matter is remitted to the Tribunal to decide the same afresh on merits by passing a speaking order after affording an opportunity of hearing to the parties in accordance with law. Needless to say that anything observed hereinbefore shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

December 6, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes