

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.1065 of 2017

Date of Decision: July 31, 2017

Union of India through the Secretary, Ministry of Defence, North Block,
New Delhi & others

...Petitioners

Versus

Malook Chand & another

...Respondents

**CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE**

Present: Ms.Nidhi Garg, Advocate,
for the petitioners.

AMIT RAWAL, J.

1. Union of India has assailed the order dated 30.8.2016 (Annexure P-1) rendered by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT"), whereby O.A.No.060/00898/2014 titled as "Malook Chand Versus The Union of India & others", has been allowed.

2. The preface of the matter leading to filing of the Original Application at the instance of respondent No.1-Malook Chand had been that on 29.12.1961, the petitioner was appointed as Lower Division Clerk (LDC). On 1.12.1969 he was promoted as Upper Division Clerk (UDC) and the next channel of promotions were as Office Superintendent Grade-II, Office Superintendent Grade-I, Administrative Officer Grade-II, Administrative Officer Grade-I and thereafter Senior Administrative

Officer. According to the averments made in the Original Application, the aforementioned promotions were governed by the statutory rules, i.e., Ministry of Defence Group 'C' (Office Superintendent Grade and Office Superintendent Grade II) Recruitment Rules, 1977 and the seniority had been subject to adjudication by various Benches of the Tribunal at all levels starting from the post of Office Superintendent Grade II.

3. A significant judgment dated 5.12.1986 was rendered by the Central Administrative Tribunal Madras Bench in V.Balachandran Versus Union of India, filed by Office Superintendent Grade II promoted on adhoc basis. 314 posts of Office Superintendent Grade II had fallen vacant between 1970 to 1975. The same remained unfilled due to want of Recruitment Rules. However, Departmental Promotion Committee (for short DPC") was held in 1975. Selections were made. The aforementioned proceedings were challenged in the Allahabad High Court on the premise that there was no integrated seniority, whereas the DPC proceedings should have been held on the basis of All India Common Integrated Seniority. The writ petition was allowed while quashing the DPC proceedings with a direction that proper DPC be held for 314 vacancies without changing the gradation of the committee already made in 1975 proceedings. Thereafter, another DPC was held in 1980, which was also quashed and the matter with regard to filling up the vacancies continued.

4. It was case of the applicant-respondent, Malook Chand, that he had earlier preferred O.A.No.503-PB-2001 on the premise, that certain persons in the department used to be given officiating promotion and then on regular basis, they claimed seniority by counting service rendered in officiating capacity The aforementioned Original Application was disposed

of vide order dated 18.2.2003 (Annexure A-1/1), wherein directions were issued to the respondents, therein, to consider applicant-respondent Malook Chand and one Pal Singh for promotion to the post of Senior Administrative Officer under the relevant rules and if found fit and suitable, be given benefit of promotion with effect from the dates their immediate juniors had been given promotion. The aforementioned order was assailed in this Court by filing Civil Writ Petition No.15330 of 2003 titled as “Union of India & others Versus Central Administrative Tribunal & others”, which was dismissed by this Court vide order dated 20.12.2003 (Annexure A-2). As a result thereof, on 1.3.2004 (Annexure A-3) and 27.2.2004 (Annexure A-4), the office of Directorate General (Personnel), Military Engineer Services Engineer-in-Chief's Branch, Army Headquarters, New Delhi considered the case of Malook Chand along with Pal Singh for the purpose of promotion to the grade of Administrative Officer Grade-II from the grade of Office Superintendent Grade I and noticed that as per recommendations of the Review DPC, there was no change in the seniority position. In essence, Pal Singh was placed at Sr.No.130 whereas Malook Chand at 134.

5. The aforementioned orders, Annexures A-3 and A-4, were challenged by Pal Singh before the Tribunal where the Original Application was dismissed on 07.09.2007. Aggrieved by the order dated 07.09.2007, the said order was assailed in this Court by filing Civil Writ Petition No.6712-CAT of 2008 and the Division Bench of this Court vide order dated 4.7.2011 (Annexure A-5) allowed the writ petition by quashing the order dated 07.09.2007 passed by the Tribunal as well as order dated 1.3.2004 (Annexure A-1) with further direction to the official respondents to prepare a fresh seniority list on the principle that the seniority of the officers in the

grade of Office Superintendent Grade-I shall not be affected as long as they attained the benchmark of `Good'.

It was next contended that after the receipt of the order of the High Court, the applicant submitted number of representations, referred to in the Original Application and also legal notice, which were not acceded to, necessitating him to file Original Application No.693/PB/2012. The CAT, vide order dated 9.12.2013 (Annexure A-6), disposed of the Original Application with a direction to the official respondents to take decision on the legal notice. In compliance of the aforementioned directions, vide impugned order dated 10.6.2014 (Annexure A-1), the official respondents rejected the case of the applicant giving cause of action to him to file the Original Application, in question.

6. Ms.Nidhi Garg, learned counsel representing the petitioner-Union of India submitted that in compliance of the directions issued by the Madras Bench in the order dated 5.12.1986, the petitioners issued all India seniority list on 29.1.1988 and on 7.8.2000 w.e.f. 20.1.1984. Malook Chand was promoted as Administrative Officer Grade-II on adhoc basis and thereafter the promotion was regularised w.e.f. 16.6.1984. On 7.8.1987, applicant-respondent was also promoted as Administrative Officer Grade-I and thereafter on 14.9.2000 as Office Superintendent Grade-II (notionally) with effect from the date of original panel issued on 30.9.1983. Being dissatisfied with the aforementioned order, respondent No.1-applicant preferred O.A.No.1024/PB/ 2000, which was disposed of by the CAT vide order dated 12.12.2000 with a direction to the authorities to consider the representation of Malook Chand applicant-respondent No.1.

7. Learned counsel for petitioner-Union of India further submitted

that the orders dated 1.3.2004 (Annexure A-3) and 27.2.2004 (Annexure A-4) were only challenged by Pal Singh before the CAT, which was dismissed on 7.9.2007, though Pal Singh was successful before this Court in the Civil Writ Petition, but the same benefit cannot be granted to Malook Chand-respondent No.1. This is the prime reason given in the order dated 10.6.2014 while rejecting the representation, which was assailed in the Original Application before the CAT.

8. Ms.Nidhi Garg, learned counsel for petitioner-Union of India also submitted that the CAT has failed to appreciate the fact that the Original Application was barred by limitation as the claim of the applicant-respondent had initially been rejected on 1.3.2004 as the said order was upheld by the CAT. The applicant-respondent was not a party in the aforementioned writ petition. The CAT overlooked the fact that applicant-respondent cannot be allowed to approach the Court again and again for the same cause of action, as the aforementioned Original Application was hit by *res judicata* and urged this Court to set-aside the impugned order.

9. We have heard the learned counsel for the petitioners, appraised the paper book, impugned order and are of the view that there is no merit and force in the submissions of Ms.Nidhi Garg.

10. In our opinion, the findings recorded by the CAT are based upon the appreciation of the matter, taking the order dated 4.7.2011 rendered in Civil Writ Petition No.6712-CAT of 2008 into consideration.

The operative part of the same reads thus:-

“19. In view of the above, the writ petition succeeds. The order of the Tribunal, dated 7.9.2007 (P-1) and order dated 1.3.2004 (A-1) are hereby quashed. It is further directed that

the official respondents shall prepare a fresh seniority list on the principle that the seniority of the officers in the grade of Office Superintendent Grade-I shall not be affected as long as they have attained the benchmark of 'Good'. In other words, further classification on the basis of benchmark of 'Very Good', 'Excellent' and 'Outstanding' shall not be given effect because it lacks any statutory flavour. The official respondents are also directed to treat the private respondents as junior to the petitioner and consider the case of the petitioner for promotion to the post of Senior Administrative Officer from the date any person junior to him was promoted. The official respondent Nos.1 to 3 shall also re-fix the pay of the petitioner, release and give him all consequential benefits including arrears by re-computing the pension or other pensionary benefits. All the aforesaid directions shall be carried within a period of three months from the date of receipt of a copy of this order.”

11. In view of the directions given by the CAT in the orders dated 12.12.2000 and 18.2.2003, the authorities passed two orders, i.e., 1.3.2004 (Annexure A-3) and 27.2.2004 (Annexure A-4) holding that there was no change in the seniority position. The aforementioned orders are almost on identical grounds. For the sake of brevity, the operative part of the same reads thus:-

“Order dated 1.3.2004

(g) that the above review DPC on the basis of their (re) assessment made in respect of your character rolls has

empanelled you at 130 (Sh Pal Singh) and at 134 (Sh Malook Chand) in the panel of promotion from Office Supdt Gde I to Administrative Officer Gde II issued vide E-in-C's Branch letter No.A/41106/R-DPC/AO II/83/E1R dated 12.05.2000. As a consequence of your junior private respondents (except Sh.Mam Raj and Sh.Prem Sagar) in the grade of Office Supdt Gde I having been assessed higher in merit to that of you as (re) assessment now by RDPC, their seniority versus you has gone up in the Grade of Administrative Officer Gde II as under:-

<i>Sequence of empanelment/ revised seniority as Office Supdt Gde I</i>	<i>Name of applicant/private respondents Sarvshri</i>	<i>Sequence of empanelment/ revised seniority as Admin Officer Gde II</i>	<i>Remarks</i>
63	ML Kalra	5	Senior to applicants
69	Sital Singh	37	-do-
78	Hira Lal Kashyap	41	-do-
79	Harjit Kamal Gill	42	-do-
82	Gurcharan Dass Kaura	7	-do-
84	Pal Singh (Applicant)	130	-do-
86	Sanjeev Panwar	8	Senior to applicants
91	Malook Chand (Applicant)	134	
101	Kanulal Shukla Das	51	Senior to applicants
114	Mam Raj	146	Remain junior to applicants
115	Prem Sagar	147	-do-
117	Charan Das Hans	54	Senior to applicants
127	TAK Kutty	60	-do-
129	R Subramanian	62	-do-
133	N Mahadevan	66	-do-
134	P Sethumahadevan	67	-do-
142	Gurdas Ram Sidhu	73	-do-

(h) that notional date of seniority in the Grade of AO-II has been assigned as 16 Jun 84 for you and all similarly placed individuals as per Annexure A-8 (Pal Singh) and Annexure A-7

(Malook Chand) of OAs.

i) that as a consequence of your (re) empanelment by RDPC in the grade of Administrative Officer Gde II in consonance with Hon'ble Tribunal order dated 18 Feb 03, a review DPC has further (re) assessed your relevant character rolls and has empanelled you at 108 (Sh Pal Singh) and at 112 (Sh Malook Chand) in the Panel of promotion from Administrative Officer Gde II to Administrative Officer Gde I issued vide E-in-C's Branch letter No.A/41106/R-DPC/AO 1/87/E1R dated 12.05.2000. The promotion from Administrative Officer Gde II to Administrative Officer Gde I being on 'Selection' basis as per then prevalent Recruitment Rules and as you having been graded lower in merit than all private respondents, your merit in the Panel of Selection has further come down.

(j) that notional date of seniority in the Grade of AO-1 has been assigned as 08 Aug 87 for you and all similarly placed individuals as per Annexure A-8 (Pal Singh) and Annexure A-7 (Malook Chand) of OAs.

(k) that since your panel seniority in the grade of Administrative Officer Gde I has been assigned by RDPC now at 130 (Sh Pal Singh) and 134 (Sh Malook Chand) and as no juniors to you in the grade of Administrative Officer Gde I have been promoted as Senior Administrative Officer by the department, your case for promotion to Grade of Senior Administrative Officer is not required to be considered as per operating para of the said judgment.

(2) Panel of your promotion from Office Supdt Gde 1 to AO-II and from AO-II to AO-1 as reviewed by RDPC now and issued vide E-in-C's Branch letter No.B/43006/R-DPC/AO II/PS & MC/E1 DPC dated 27 Feb 2004 and No.B/43008/R-DPC/AO 1/PS & MC/E1 DPC dated 27 Feb 2004 respectively are attached herewith.

(3) Please acknowledge receipt.

(4) By issue of this speaking order, Hon'ble Central

Administrative Tribunal Chandigarh Bench order dated 18 Feb 2003 in O.A.No.502/2001 and 503/2001 stands implemented.”

Order dated 27.2.2004

*Tele: 23019687 Directorate General (Personnel)/F1 (DPC)
Military Engineer Services
Engineer-in-Chief's Branch
Army Headquarters
DHQ PO, New Delhi-110011*

B/43008/R-DPC/AO II/83/PS & MC/E1 DPC 27 Feb 2004

List 'A'

*REVISED CONSOLIDATED PANEL TO THE GRADE OF
ADMINISTRATIVE OFFICER GRADE-II ON ACCOUNT OF
REVIEW DPC AGAINST VACANCIES FOR THE YEAR 1983
IN THE MES*

1. Reference this HQ letter No.A/41106/RDPC/AO 11/83/E1R dated 12 May 2000 regarding panel for promotion to the grade of AO II against the vacancies for the 1983.

2. A review DPC for considering promotion to the grade of Adm Offr Gde-II from the grade of Office Supdt Grade I in respect of MES-307870 Sh Pal Singh and MES-305365 Sh Malook Chand, in compliance with the directions of the Hon'ble Central Administrative Chandigarh Bench Judgement dated 13 Feb 2003 in OA No.502/2001 and 503/2001 was held on 26 Feb 2004. As per recommendations of the R-DPC, there is no change in the seniority position as mentioned in the Panel No.A/41106/R-DPC/AO II/83/E1R dated 12 May 2000 as shown below:-

*(a) MES-307870 12.09.40 At srl.No.130 (below the name
Shri Pal Singh (SC) of Shri Sohan Lal (Srl.No.129)
and above the name of Smt.
Sakuntala Subaiah
(Srl.No.131)*

*(b) MES-305365 01.07.43 At Ser No.134 (below the name
Malook Chand (SC) of Paresh Chandra Dass (Srl*

*No.133) and below the name of
Shri MM Biswas (Srl.No.135).*

3. *This will be subject to the outcome of the SLP.*

(AK Bajaj, IDSE)

SE

Dir (Pers)/E1DPC

for Engineer-in-Chief.

Copy to:-

Ministry of Defence (Apptts)

List '3', 'C' & 'F'

Internal

E1A, E1B, E1C, MISCIV), CSCC, E COORD-1, E2WPC

CRO'O), QMG BR/ADG TE.HQ DGBR/Per Dte."

12. Undisputedly, the order of this Court in the case of Pal Singh has already been implemented. In fact, the benefit which the applicant-respondent had sought in pursuance to the judgment rendered in Pal Singh's case (Supra) was on the premise that one Mam Raj had also been promoted in 1992 despite the fact that he was junior to him. It was, thus, claimed that applicant-respondent was also eligible or entitled to future promotion at least from the date when Mam Raj was promoted. This fact was not controverted by the official respondents in the case of Pal Singh, who got the benefit in the year 2012, whereas they had chosen to resist the claim of the applicant-respondent. In fact, the petitioners were required to consider the case of the applicant-respondent at par with the case of Pal Singh.

13. Further, the orders dated 1.3.2004 and 27.2.2004 were passed in the case of Pal Singh as well as Malook Chand jointly. In such circumstances, the reasoning assigned by the petitioners in the impugned order dated 10.6.2014 (Annexure A-1) that the applicant-respondent had not challenged the aforementioned orders has rightly been repelled by the CAT.

The objection taken by the petitioners is legally unsustainable. The order of the CAT resulted into passing of an order in favour of the applicant-respondent, whereby the petitioners have been directed to review the case of the applicant-respondent by taking into consideration the order dated 4.7.2011 (Annexure A-5) rendered by this Court in Civil Writ Petition No.6712-CAT of 2008. The applicant-respondent was held entitled to consequential benefit notionally as allowed in the case of Pal Singh and the actual arrears have been restricted to the period commencing from 18 months preceding the filing of previous Original Application No.693/PB/2012 by the applicant.

14. There is no force in the submission of the learned counsel for the petitioners that the claim of the applicant-respondent was stale/barred by law of limitation. In fact, the petitioners were required to implement the order of the High Court in letter and spirit considering the fact that the order dated 1.3.2004 pertaining to both Malook Chand and Pal Singh had been set-aside.

15. For the reasons aforementioned, we do not find any illegality and perversity in the impugned order rendered by the CAT. The writ petition, while upholding the impugned order, is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**July 31, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No