

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.25413 of 2017
Date of Decision: November 08, 2017

MES No.408258 Om Parkash Gupta

...Petitioner

Versus

Union of India, through Secretary, Ministry of Defence & others

...Respondents

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

Present: Mr.K.B.Sharma, Advocate for
Mr.D.R.Sharma, Advocate,
for the petitioner.

AMIT RAWAL, J.

1. Petitioner Om Parkash Gupta is aggrieved of the order dated 15.2.2017 (Annexure P-4) rendered by the Central Administrative Tribunal, Chandigarh Bench (for short "CAT") in O.A.No.060/00909/2016, whereby the following relief sought by him, has been declined:-

"8(i) That the impugned speaking order dated 07.03.2016 (A-1) be quashed and set aside being contrary to the decision passed by the Hon'ble Full Bench in the case of Kr.Gajendra Singh (A-13), para 8, 9 & 10 and order dated 12.12.2012 and order dated 02.12.2015 passed by this Hon'ble Tribunal.

(ii) That a direction be issued to the respondents to re-fix the seniority of the applicant in the post of Surveyor Assistant Grade-I on the basis of his date of assuming appointment as Surveyor Assistant Grade-I (Superintending-B/R-1) and grant the applicant all the consequential notional promotion to the

post of Assistant Surveyor of Works w.e.f. 28.06.1982 and Surveyor of Works w.e.f. 16.09.1987 and above including pay and arrears of salary alongwith revised pensionary benefits and revised arrears of pension with interest @ 18% p.a. on arrears of pay and allowances and revised pensionary benefits from due dates till the actual date of payment.”

2. Before advertizing to the submissions of the learned counsel for the petitioner, it would be appropriate to give brief factual matrix of the controversy involved.

3. On 19.12.1960, the petitioner joined the office of the respondents as Superintendent B/R Grade-II and was promoted on 6.5.1965 as Superintendent B/R Grade-I. The cadre of Surveyor was merged with the Engineering Cadre upto the level of Assistant Surveyor of Works on 24.3.1964. However, on 31.3.1978, Government of India, did not accept the merger of the Cadre and ordered for its de-merger. As per the seniority list issued vide letter dated 23.10.1978, the name of the petitioner as Assistant Grade-I figured at Sr.No.193. Vide order dated 5.9.1980, de-merger was cancelled. On 26.12.1980, another seniority list was promulgated, whereby petitioner's name was shown at Sr.No.179 whereas his junior figured at 198. On 19.4.1982, junior persons were given regular promotion as Assistant Surveyor of Works for one year. Aggrieved of the same, the petitioner preferred O.A.No.252/CH/1995 before the CAT for re-fixation of the seniority in the post of Surveyor Assistant Grade-I on the basis of his date of assuming appointment as Surveyor Assistant Grade-I (Superintending-B/R-1) and grant of all consequential benefits of promotion on the post of Assistant Surveyor of Works.

4. The CAT dismissed the aforementioned Original Application on 7.9.2001. As per the facts culled out from the Original Application, one

Trilochan Singh, who was immediate senior to the petitioner and was treated similarly, preferred O.A.No.331 of 1993. Vide order dated 18.2.1994, the said Original Application was allowed by the Central Administrative Tribunal, Ernakulum Bench by giving benefit on the basis of the judgment rendered in Krishan Chander's case. The department, after implementation of the order in Krishan Chander's case, did not grant benefit to other similarly situated persons. In this regard, one Shatanand Sharma preferred O.A.No.652 of 1990. Since there was difference of opinion, the matter was referred to the Full Bench in the case of Kr.Gajendra Singh Versus Union of India and others. Vide order dated 18.1.1999, the Full Bench of the Tribunal disposed of the issue and came to the conclusion that on the de-merger of the Engineering Cadre and constitution of two separate Cadres of Engineering and Surveyor of Works pursuant to the letter dated 31.3.1978 of the Government of India, optees were entitled to be inducted in Surveyor of Works Cadre as per the option w.e.f. 1978.

5. Mr.K.B.Sharma Advocate appearing on behalf of Mr.D.R.Sharma, learned counsel for the petitioner submitted that as per the decision rendered by the Full Bench, individual cases, like of the applicant, were also directed to be considered independently. The case of Kr.Gajendra Singh (Full Bench) was followed by different Benches of the Central Administrative Tribunal and, therefore, in view of the aforementioned decision, the applicant moved Review Application No.33/2012 for seeking modification of the order dated 7.9.2001. The said Review Application was disposed of with a direction to the competent authority to re-look at the grievance of the applicant-petitioner in view of the judgment, *ibid*. On 14.8.2013, the respondents passed a speaking order rejecting the claim of

the applicant for re-fixation of the seniority w.e.f. 28.6.1982 and all other consequential benefits, like promotion as Assistant Surveyor Works and Surveyor Works w.e.f. 1987.

6. The applicant-petitioner challenged the aforementioned speaking order by filing O.A.No.060/00951/2014, which was disposed of by the CAT vide order dated 2.12.2015 and the matter was remitted to the respondents with a direction to re-visit the impugned order in the light of the directions given by the Tribunal in Review Application No.33/2012 by affording three months' time. The respondents passed the speaking order dated 7.3.2016 (Annexure A-1) and again rejected the claim of the applicant for re-fixation of the seniority in the Grade of Surveyor Assistant Grade-I from 6.5.1965 in lieu of that fixed by the respondents from January, 1981 as per fresh option given by the applicant in pursuance of the letter dated 5.9.1980.

7. It was urged that the CAT committed illegality and perversity in dismissing the claim of the petitioner on the ground of limitation without noticing the fact that during all this time, no ground of limitation was ever taken. The CAT had entertained the Review Application in 2012 while issuing directions to the respondents to re-visit the matter, thus, fresh cause of action accrued to the petitioner-applicant and, therefore, the impugned order is liable to be set-aside.

8. We have heard the learned counsel for the petitioner, appraised the paper book and are of the view that there is no force and merit in the submissions of Mr.Sharma. The applicant-petitioner had retired w.e.f. 31.5.1997. On superannuation, the applicant had claimed re-fixation of seniority in the post of Surveyor Assistant w.e.f. 6.5.1965 and all

consequential benefits of promotion as Assistant Surveyor of Works w.e.f. 28.6.1982 and promotion as Surveyor of Works w.e.f. 16.9.1987 with arrears of salary and revision of pensionary benefits. The earlier O.A.No.252/CH/1995 was dismissed being barred by limitation. No fresh cause of action accrued to the petitioner for filing Review Application in 2012 after dismissal of the Original Application as the order rejecting his claim remained unchallenged.

9. The claim of the petitioner had already become extinct in view of the dismissal of the Original Application of 1995 in the year 2001. The second Original Application was partially allowed by the CAT on 2.12.2015. Almost 51 years have elapsed regarding the claim of seniority w.e.f. 6.5.1965 and there was delay of 34 years with regard to the promotion w.e.f. 28.6.1982. The petitioner has not been able to give any satisfactory explanation before the CAT or this Court for such inordinate delay except to urge that some other persons had got the benefit almost 10 years after rejection of his claim in 2001, whereas he had retired in the year 1997.

10. It would be apt to reproduce the relevant portion of the order dated 7.9.2001, extracted by the CAT, in paragraphs 13, 14 and 15 while dismissing the Original Application of 1995. The same reads thus:-

“13. Coming to the preliminary objection regarding limitation, we find force in the submission of the respondents. The grievance of the applicant can be said to have arisen in the year 1980 i.e., long before 3 years prior to the date on which the Administrative Tribunals Act came into force. Respondents have taken a plea that cause of action regarding promoting an official who is allegedly junior to him without considering the applicant as per the seniority list, arose as far back as in early 1980 i.e. Within one year from the date of exercise of option in accordance with Government of India, Ministry of Defence

letter dated 05.09.1980.

14. Even otherwise, after notification of the Recruitment Rules, a seniority list was circulated to all Formations and a DPC was held in 1986 in which a select panel of 91 persons was drawn up which was published vide order dated 14.04.1986. Admittedly, the name of the applicant did not appear in this select list and he did not challenge the panel. However, one Krishan Chander challenged the panel in CAT, Principal Bench, through OA 1037/1986 and accordingly the same was quashed and set aside vide order dated 28.08.1987. The Principal Bench directed the Government of India to hold review DPC to identify year wise vacancies and prepare a fresh panel on year wise vacancies. Accordingly, a review DPC was held and a revised select panel was drawn up against the vacancies pertaining to years 1981 to 1985 which was published vide order dated 07.03.1990. Applicant's name again did not figure in this review DPC select panel. This was also not challenged by the applicant. Thus, the applicant cannot be allowed to claim the benefit of promotion against the vacancies pertaining to the period between 1981 to 1985. The present OA was filed only in March, 1995. Thus, the OA is barred by limitation.

15. Even on merits of the case, applicant has mainly relied on a decision of Principal Bench in the case of Krishan Chander in OA no.1037/1986 and also a judgment of CAT, Ernakulum Bench in the case of Trilochan Singh (supra). These judgments are judgments per in curiam and, therefore, cannot be made applicable to others universally. Moreover, judgment in one case cannot be a cause of action for other employees when the matter is time barred. We have gone through the judgment of CAT, Lucknow Bench in the case of Om Parkash Satija Versus Union of India (OA No.786/1993) (Annexure R/1) and judgment of CAT, Principal Bench in the case of Shatanand Sharma (supra). We are in respectful agreement with the decisions of Principal Bench and Lucknow Bench of

CAT in the said cases.”

11. The petitioner cannot be permitted to re-agitate the matter after 11 years by filing the Review Application in 2012. These factors have been examined and noticed by the CAT while dismissing the Original Application, which cannot be faulted with.

12. As an upshot of our findings, we do not find any illegality and perversity in the impugned order. No ground for interference is made out. Writ petition stands dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**November 08, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No