

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.8636 of 2017

Date of Decision.14.09.2017

Union of India and others

.....Petitioners

Vs

Gurmukh Singh and another

.....Respondents

Present: Mr. Namit Kumar, Advocate
for the petitioners.

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

-.-

AMIT RAWAL J.(ORAL)

C.M. No.13049 of 2017

Application is allowed.

Affidavit of petitioner No.3 along with Annexures P-5 to P-7 is
taken on record.

CWP No.8636 of 2017

The Union of India has preferred the writ petition against the order dated 15.11.2016 rendered by the Central Administrative Tribunal (hereinafter called as "CAT") in OA No.060/01204/2015 whereby the claim of the applicant-respondent No.1 seeking stepping up of his pay at par with his juniors namely Bihari Dass and Raksha Rani w.e.f. July, 2004 has been accepted and the arrears of pay have been confined to the period of three years prior to the filing of the OA i.e. 22.12.2015.

Mr. Namit Kumar, learned counsel appearing on behalf of the Union of India submitted that the applicant-respondent No.1 preferred the aforementioned OA claiming the relief mentioned above but the same was objected by filing a detailed written statement wherein it was specifically

averred that the applicant-respondent No.1 never gave any option. In this regard, he drew attention of this Court to sub-para (iii) of Para 4 of the written statement in which FR 22(1)(a) governing the rule of option, had been extracted whereas the other applicants as per Annexures P-5 & P-6 gave their options for fixation of pay from the date of their promotion. It is in this backdrop of the matter, the respondent No.1 had been denied stepping up of pay, therefore, order of CAT is erroneous and not sustainable in the eyes of law on the following premise:-

(i) Claim of respondent No.1 seeking fixation of pay at par with his junior w.e.f. July, 2004 was barred by limitation as the OA was filed more than 11 years from the date of accrual of the cause of action.

(ii) CAT has erroneously relied upon the judgment passed in **M.R. Gupta Vs. Union of India (1995) 5 SCC 628** which is not applicable to the facts and circumstances of the present case as the difference of pay of respondent No.1 with his juniors was due to non-submission of option to the DDO while fixation of pay on grant of 1st financial upgradation on completion of 16 years of regular service under TBOP Scheme as per FR 22(1) (a).

(iii) It is well settled proposition of law that stepping up of pay at par with juniors is not attracted in every case. Even grant of arrears of three years prior to the filing of the OA was not maintainable as the grant of arrears of pay is based upon the period of limitation for approaching the Court of law. Since the limitation for approaching the CAT is one year from the

date of accrual of cause of action and in case of submission of a representation has been submitted by the employee, the limitation is one year and six months as per Section 21 of the Administrative Tribunals Act, 1985, the OA was not maintainable, thus, urges this Court for setting aside of the order under challenge.

We have heard learned counsel for the petitioners, examined the aforementioned submissions threadbare and also the order under challenge and of the view that there is no ambiguity and illegality in the order under challenge as the arguments of Mr. Namit Kumar are wholly misplaced.

For appreciating the controversy, it would be apt to reproduce sub-para (iii) of Para 4 of the written statement and corresponding paragraphs of rejoinder:-

“Para 4(iii)

That admitted to the extent that at the time of pay fixation on grant of financial upgradation, the applicant was required to submit his option in view of FR 22(i)(a) and in view of his pay fixation. The FR 22(1)(a) is reproduced herein below

*****, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be refixed in accordance with his rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible as from the date of initial appointment/promotion to be exercised*

within one month from the date of such regular appointment.”

Instructions below part 3 of Annexure A-2 clearly show that all concerned were apprised to exercise option for fixation of pay within one month from the date of issue of the memo. As per records, the official has not submitted any option for fixation of pay as required. Hence, the pay of the applicant was fixed from the date of promotion/financial upgradation as per Rule (Annexure R-1).

Rejoinder Para 4 (iii & iv)

That the contents of these paras are admitted to the extent that the applicant was required to submit his option for fixation of his pay under FR 22(1)(a). Rest of the contents of these paras are denied. Further, it is submitted that the Applicant has sent his option within one month from the date of grant of TBOP (14.6.2004) vide regd. Letter No.4961 dated 05.07.2004 from Kharar S.O. but is not having its copy and when the applicant demanded the same from respondents under RTI the same (record) has been stated to be weeded out. It appears that the respondents have not fixed the pay of the applicant and not made any entry in his service book and now blaming the Applicant that he has not submitted his option. Whereas the Applicant is giving the regd. Letter/dispatch no. and the date of letter whereby he had sent his option, but, however, the said dispatch register has been weeded out by the respondents intentionally, only when the applicant has demanded the said information under RTI, just to hide their own wrong.”

On conjoint reading of the aforementioned written statement and rejoinder, it is *ex facie* crystal clear that the applicant-respondent No.1 had submitted his option vide registered letter No.4961 dated 5.7.2004 from SO Kharar and when copy of the same was sought under Right to Information Act, it was replied that it stands weeded out. It was claimed by the claimant that adverse inference is liable to be drawn against the petitioners and in favour of respondent No.1 for not providing the information as the letter was sent under registered cover.

The factum of respondent No.1 being senior to Bihari Dass and Raksha Rani has not been disputed. Bihari Dass joined on 14.10.1987 and Raksha Rani joined on 05.09.1987 whereas the respondent No.1 joined on 04.09.1987. A person senior, thus, cannot be held to draw less salary. It is settled position of law that senior cannot draw less salary than his juniors. The Supreme Court in the judgment rendered in **Commissioner and Secretary of Govt. of Haryana Vs. Ram Sarup Ganda 2007(2) SCT 476** held as under:-

“.....If there is any anomaly to the effect that the senior government servants are receiving lesser pay than their juniors, who entered the service from a different source of recruitment, certainly such senior government servants are entitled to stepping up of their pay in order to bring them on par with the salary which is being received by their juniors....”

The same view was reiterated by Apex Court in **Punjab State Electricity Board and others Vs. Gurmail Singh 2008(3) SCT 18.**

As regards the point of limitation, CAT relied upon the decision rendered by Supreme Court in **Union of India Vs. Tarsem Singh (2008) 8 SCC 648** wherein their Lordships held as under:-

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several

others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

Stepping up of pay would not be barred by limitation as it is recurring cause of action. However, CAT rightly restricted the payment of arrears to the period of three years prior to the filing of OA. Thus, it cannot be said that CAT wrongly applied the ratio decidendi culled out by Supreme Court in the judgment reported in **M.R. Gupta's case** (supra) to the facts of the present case.

In view of the observations made above, we are of the view that the impugned order passed by the CAT is based upon the appreciation of facts and law and cannot be faulted with. The same is upheld and the writ petition stands dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 14, 2017
Pankaj*

Whether speaking/reasoned

Yes

Whether reportable

Yes