

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

**CWP No.10440 of 2016(O&M)
DATE OF DECISION:02.07.2019**

Om Parkash Gupta

...Petitioner

Vs.

Union of India and others

...Respondents

**CORAM:- HON'BLE MR.JUSTICE JASWANT SINGH
HON'BLE MR.JUSTICE LALIT BATRA**

Present: Ms. Seema Pasricha, Advocate
for the petitioner.

Mr. Vivek Chauhan, Advocate
for respondents No.1 to 4.

LALIT BATRA, J.

This writ petition has been filed by petitioner-Om Parkash Gupta impugning the legality of order dated 17.03.2016 rendered by Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter to be referred to as “Tribunal”), in Original Application No.060/00236/2016 (hereinafter to be referred to as “OA”) titled “Om Parkash Gupta Vs. Union of India and others”, vide which petitioner had challenged order dated 02.12.2013 (Annexure P-10) passed by respondent No.4, in terms of which, benefit of transport allowance double the normal rates (hereinafter to be referred to as “allowance”) was declined to the petitioner and above said OA moved by applicant-Om Parkash Gupta (petitioner herein) has been dismissed.

2. Petitioner's case in brief is that he had joined as Lower Division Clerk (LDC) in Government Medical Store, Karnal, under the respondents in the year 1974 and he retired as such on 31.05.2015. In the year 1996, petitioner met with a major accident and got disabled to the extent of 75%, as per disability certificate dated 07.06.1997 (Annexure P-4) issued by Safdarjang Hospital, New Delhi. Disability of petitioner was reassessed by the Medical Board, Civil Hospital, Karnal, vide disability certificate dated 06.09.2006 (Annexure P-5), in terms of which, disability to the extent of 75% was assessed, which was not likely to improve and reassessment was not required. Petitioner resumed duty on 28.07.1997 with the recommendation of doctor concerned to resume duty with modified job. However, the modified job was not assigned to the petitioner by respondent No.4. Petitioner continued to render services as per his capacity. Petitioner being orthopaedically handicapped having suffered permanent disability to the extent of 75%, then in terms of Government Notification dated 31.08.1978/03.12.1979 amended from time to time as per letters dated 03.10.1997, 29.08.2008 and 05.08.2013 (Annexures P-6, P-7 and P-8) issued by Government of India became legally entitled for grant of allowance with effect from year 1997 and had been agitating his claim while making representation (Annexure P-9(colly)) to respondent No.4, but the allowance was not granted to him and in fact his claim in this regard was rejected by respondent No.4, vide order dated 02.12.2013 (Annexure P-10). Thereafter, petitioner made a representation (Annexure

P-12) to respondent No.3, being First Appellate Authority, but no action has been taken by respondents in that matter. Petitioner had also sent a request letter (Annexure P-14) to respondent No.3 to decide his representation and to set aside order dated 02.12.2013 passed by respondent No.4 but to no avail. Petitioner retired on 31.05.2015 on attaining the age of superannuation. After making all efforts, petitioner had filed OA No.060/00236/2016, as detailed above, before Tribunal, and sought direction to respondents to grant him allowance with effect from year 1997 till his retirement. However, above said application was dismissed by the Tribunal, vide order dated 17.03.2016, mainly on the ground of delay and laches. It is pleaded that petitioner has been penalized at the hands of respondent No.4. Since petitioner had been perusing his cause since long and as such there is no delay on his part. Action of respondents is against various notifications issued from time to time by the Government of India. It is the duty of respondents to implement Government Notifications for grant of allowance to handicapped employee (petitioner). Rather respondent No.4 took years to pass impugned order dated 02.12.2013 (Annexure P-10), in terms of which, claim of petitioner for grant of allowance was declined. Petitioner has been performing duties as per his capacity since the year 1997. Even respondent No.4 did not assign modified job to the petitioner as per recommendations of doctor concerned. Petitioner was never served with any explanation/show cause notice. Since claim of allowance on account of physical disability of

petitioner has been wrongly declined to him by the respondents, thus, petitioner has prayed for setting aside of order dated 02.12.2013 passed by respondent No.4 as well as impugned order dated 17.03.2016 passed by Tribunal in OA, and for grant of above said relief.

3. On notice, respondents No.1 to 4 filed reply to the instant petition wherein preliminary objections *inter alia* of maintainability, suppression of material facts from the Court by the petitioner, failure on the part of petitioner to take recourse of statutory appeal prior to filing OA before Tribunal and claim raised by petitioner being highly belated, have been taken. On merits, it is contended that during service, petitioner was promoted as Upper Division Clerk (UDC) with effect from 28.02.1978 on adhoc basis, vide order dated 30.03.1978. Petitioner was suspended several times on account of dereliction of duty and he was reverted to the post of Lower Division Clerk (LDC). Petitioner had met with accident in the year 1996 and availed leave with effect from 06.10.1996 to 25.07.1997 and after getting recovered resumed duty on 28.07.1997. Though petitioner's name for promotion to the next higher grade of UDC was considered on 11.09.1996 by the Departmental Promotion Committee but in view of overall assessment of his service track record and annual confidential reports, he was not considered fit for promotion. It is contended that moreover petitioner did not contribute to the department since assuming duty on 28.07.1997. As per disability certificate issued by Safdarjang Hospital, New Delhi, petitioner is having 75% disability in all the limbs

rendering him practically incapacitated to do the work assigned to his post. It is contended that disability certificate dated 07.06.1997 issued by Safdarjang Hospital, New Delhi, and disability certificate dated 06.09.2006, issued by Civil Hospital, Karnal, were produced by the petitioner only in the year 2011 alongwith application dated 11.11.2011 for getting benefit of allowance. Petitioner was not performing any duty and in fact he used to come office on a vehicle especially meant for orthopaedically handicapped person just to mark his attendance in the Attendance Register and most of the time he did not dismount his vehicle and just sneaked away after marking the attendance and he was not doing any iota of work. Since petitioner did not contribute to the cause of Government work, hence vide order dated 02.12.2013, representation made by petitioner for grant of allowance, was rejected mainly on the ground that allowance was permissible to those employees who render services sincerely in the interest of the State. In terms of Sub-Rule (iv) (a) of Rule 23 of the Central Civil Services (Class, Control and Appeal) Rules, 1965 (hereinafter to be referred to as "Rules, 1965"), statutory service appeal is available to the Government servant in case of denial of his pay and allowances etc. Further Rule 25 of said Rules, prescribes that appeal is to be preferred within period of forty five days from the date of receipt of copy of order by the Government employee. However, petitioner did not prefer the statutory appeal within time frame and infact filed the appeal on 15.02.2016 after huge delay and immediately thereafter on 15.03.2016 he

had filed OA before the Tribunal and that too at belated stage, which OA was rightly dismissed by the Tribunal, vide order dated 17.03.2016. In view of above, since petitioner was not performing any duty, claim raised by him for allowance was rightly rejected. Thus, it is prayed that instant petition being devoid of merits may be dismissed with costs throughout.

4. Petitioner has filed rejoinder to the written statement of respondents No.1 to 4, wherein he has controverted the contentions of appearing respondents and reaffirmed his pleadings as mentioned in the petition.

5. We have heard learned counsel for the parties and have carefully gone through the record of the case.

6. Learned counsel for the petitioner while reiterating the cause of petitioner has vehemently argued that petitioner had met with major accident in the year 1996 and suffered permanent disability to the extent of 75%, then in terms of Government Notifications (Annexures P-6 to P-8), it was incumbent upon the respondents No.1 to 4 to grant him allowance but despite several representations, allowance was not released in favour of petitioner. She further urged that impugned order dated 02.12.2013 passed by respondent No.4 and impugned order dated 17.03.2016 passed by the Tribunal being illegal and arbitrary are liable to be set aside and then in terms of Government Notifications issued from time to time, petitioner being orthopaedically handicapped employee is entitled to get allowance.

7. On the other hand, learned counsel for respondents No.1 to 4 while refuting the claim of petitioner has argued that since petitioner was not contributing to any work of his department after assuming duty on 28.07.1997, in this scenario, claim raised by the petitioner for grant of allowance, was rightly rejected by respondent No.4, vide order dated 02.12.2013. He further urged that OA moved by petitioner before Tribunal to impugn the legality of order dated 02.12.2013 was rightly dismissed by the Tribunal, vide order dated 17.03.2016 and as such instant writ petition being devoid of merits, may be dismissed.

8. While having due regard to the contentions of both the parties, it is observed that admittedly petitioner was appointed as LDC on 01.02.1974 under the employment of respondents No.1 to 4 and he was promoted as UDC on adhoc basis with effect from 28.02.1978. However, on account of disciplinary proceedings, petitioner was reduced to the post of LDC on 09.12.1983. Though there were several ups and downs in the service career of petitioner, in the year 1996 he met with an accident and, therefore, he had to avail leave with effect from 06.10.1996 to 25.07.1997 and resumed duty on 28.07.1997. On account of injuries sustained in the above said accident, petitioner has suffered disability to the extent of 75% being case of traumatic spastic quadriparesis-fracture C5-6 with neurogenic bladder and bowel, which is permanent physical impairment, as is evident from disability certificate dated 07.06.1997 (Annexure P-4) and further reassessed as such on 06.09.2006, vide disability certificate

(Annexure P-5). In view of above permanent disability suffered by petitioner, it was incumbent upon the employer of petitioner to assign him modified job as per his physical capacity but it appears that no such order was issued in this regard by his employer. Government from time to time has issued various Notifications for grant of allowance to its employees who have suffered disability. Claim of petitioner for grant of allowance was rejected by the department, vide order dated 02.12.2013 and further his application before the Tribunal in this regard was also dismissed, vide order dated 17.03.2016.

9. Having gone through the pleadings as well as material placed on record, we are of the considered opinion that instant writ petition is entitled to succeed partly and to substantiate said findings, reasons are enumerated as under:-

(i) As discussed above, during the course of employment, petitioner had met with major accident in the year 1996, wherein he had sustained injuries and thereby suffered permanent disability to the extent of 75%, as is evident from disability certificates dated 07.06.1997 and 06.09.2006 (Annexures P-4 and P-5).

(ii) In terms of Government Notifications (Annexures P-6, P-7 and P-8) issued from time to time, dating back from 31.08.1978, relating to grant of allowance, it is quite evident that orthopaedically handicapped employee is entitled to get allowance.

(iii) Though petitioner has taken the stand that after having suffered permanent disability, he had brought said fact

to the notice of his employer but on the other hand respondents No.1 to 4 have categorically contended that application (Annexure R-1/8) for grant of allowance was moved by the petitioner only on 11.11.2011 and at that time original disability certificates dated 07.06.1997 and 06.09.2006 were attached with the application. However, a bare perusal of record of the case especially various applications attached with petition reveals that initial letter for grant of allowance on account of permanent disability was moved by the petitioner on 20.05.2011 to his employer and since said application was not annexed with original disability certificates, then on raising demand of original certificates by respondents No.1 to 4 vide their letter No.GB/22/OPG/3356 dated 26.07.2011, in pursuance thereof, vide letter dated 11.11.2011 (Annexure R-1/8), petitioner had forwarded his original disability certificates dated 07.06.1997 and 06.09.2006 to his employer to do the needful. Thus, it is apparent on the face of the record that petitioner had moved request for grant of allowance on account of permanent disability to his employer and that application was moved by him on 20.05.2011 and prior to that no such request was made.

(iv) A bare perusal of impugned order dated 02.12.2013 (Annexure P-10) issued by respondent No.4, in terms of which, claim of petitioner for grant of allowance on account of permanent disability, was rejected, said order mainly rests upon the fact that after having suffered permanent disability, petitioner did not work for the cause of department and since he did not perform any duty, he was not entitled for grant of said allowance. To highlight above said aspect, relevant portion of impugned order dated 02.12.2013 is

reproduced as under:-

“Further you have not been contributing to any Depot work since assuming duty from 1997. You are having 75% disabilities in all the limbs rendering you practically incapacitated to do the work attached to the post. Keeping in view your health conditions, you have been interviewed several times to know about your capabilities to perform the kind of work you can perform in this Depot. But you have been avoiding the same. Rather it has come to the notice that you always use to come to this office on a vehicle especially designed for orthopaedically handicapped persons just to mark attendance in the Central Attendance Register. Most of the times, you even do not dismount your vehicle and just sneak away after marking the attendance. Meaning thereby you are not doing even an iota of Depot work. So under the given circumstances is not justifiable to grant such allowance since you are not performing any duty.”

A bare perusal of impugned order dated 02.12.2013, reveals that petitioner was not doing any kind of work for the cause of his employer and he simply used to come his office and after having marked attendance in the Attendance Register, he used to sneak away from the office and this was going on since the year 1997. In case above said plea of respondent No.4 is assumed to be correct for the sake of arguments, then in that eventuality in case an employee is habitual to leave the office and that too immediately after

marking his attendance in the Attendance Register and the so-called practice is going on for years together, then no employer would tolerate such misconduct and wilful absence from duty of official concerned and would immediately take disciplinary action against the erring employee, whereas a bare perusal of contents of written statement furnished at the instance of respondents No.1 to 4, it nowhere reveals that any disciplinary action was ever initiated against the petitioner by his employer and that too after the year 1997. Once no action was initiated by respondents No.1 to 4 against petitioner in view of his alleged misconduct and absence from duty and that too for years together spanning from year 1997 onwards, it can be conveniently held that reasons for rejection of claim of petitioner for grant of allowance on account of his permanent disability recorded by respondent No.4, are altogether frivolous and contrary to factual position. In this view of the matter, order dated 02.12.2013 (Annexure P-10) issued by respondent No.4 while rejecting the claim of petitioner, being illegal cannot be sustained in the eyes of law.

(v) Regarding aspect of controversy as to whether while feeling aggrieved with order dated 02.12.2013 (Annexure P-10), any statutory appeal was preferred by the petitioner to the appellate authority or not, it is observed that

vide impugned order dated 02.12.2013, claim of petitioner for grant of allowance was declined, said order of denial of allowance, falls in the category of order against which appeal lies and it has been so specifically provided in Sub-Rule (iv) (a) of Rule 23 of the Rules, 1965. Rule 25 of Rules, 1965, prescribes period of limitation in filing such appeal. Statutory appeal is to be preferred within a period of forty five days from the date on which a copy of the order appealed against is delivered to the appellant. Petitioner has categorically pleaded that since vide order dated 02.12.2013 (Annexure P-10), his claim for grant of allowance was declined by respondent No.4, thereafter, he had made representation to respondent No.3 being Appellate Authority. A bare perusal of record of the case reveals that immediately after passing of impugned order dated 02.12.2013, petitioner had moved application dated 16.12.2013 (Annexure P-11) for grant of allowance and it was specifically mentioned therein that the said representation was being moved in reference to letter No.7338-39 dated 02.12.2013. In continuation of representation dated 16.12.2013 (Annexure P-11), petitioner had sent another letter (Annexure P-12) to respondent No.4 for grant of allowance in his favour. At this juncture, it is relevant to point out here that representation dated 16.12.2013 (Annexure P-11) alongwith

annexures was forwarded by respondent No.4 to the respondent No.3, vide forwarding letter dated 28.01.2014 (Annexure P-13) and it was specifically mentioned in the subject of said letter that representation of petitioner was being forwarded to the higher authorities in respect of claim of petitioner for grant of allowance being orthopaedically handicapped employee. Since there was no response from the side of respondent No.3 to whom representation dated 16.12.2013 (Annexure P-11) was forwarded by respondent No.4, vide forwarding letter dated 28.01.2014 (Annexure P-13), faced with this situation petitioner had sent reminder (Annexure P-14) to the respondent No.3, reminding said authority to look into his representation/appeal for grant of allowance, which was previously forwarded by respondent No.4, vide forwarding letter dated 28.01.2014 (Annexure P-13). At this juncture, it is relevant to point out here that even though petitioner in his writ petition has categorically pleaded that after passing of rejection order of his claim by respondent No.4, vide order dated 02.12.2013 (Annexure P-10), he (petitioner) had made a representation on 16.12.2013, which representation was duly forwarded on 28.01.2014 (Annexure P-13) by respondent No.4 to the respondent No.3, appellate authority but hearing no response on that representation from

the quarter concerned, he was constrained to make request letter (Annexure P-14) to the respondent No.3, and that too in vain. However, a bare perusal of contents of written statement furnished at the instance of respondents No.1 to 4, reveals that no reply in respect of pleadings “representation dated 16.12.2013 (Annexure P-11) moved by petitioner and forwarding of said representation by respondent No.4 to respondent No.3-Appellate Authority, vide forwarding letter dated 28.01.2014 (Annexure P-13)” has been given. On the other hand, it has been replied in the written statement that petitioner while feeling aggrieved with order dated 02.12.2013 had preferred appeal against said order only on 15.02.2016 and within one month thereafter i.e. on 15.03.2016 petitioner had filed OA before the Tribunal, which OA was dismissed by the Tribunal, vide order dated 17.03.2016 and once judgment was passed by the Tribunal, there is no provision in the Rules, 1965, to entertain statutory appeal. However, aforesaid reply made by respondents No.1 to 4 especially preferring of statutory appeal by petitioner appears to be factually wrong in the manner that there is material on the record to show that immediately after passing of impugned order dated 02.12.2013, appeal in the form of representation was preferred by petitioner on 16.12.2013 and the said representation

alongwith annexures was duly forwarded by respondent No.4 to respondent No.3-Appellate Authority, vide forwarding letter dated 28.01.2014 (Annexure P-13). Since there was no response from respondent No.3 in respect of fate of representation/appeal, then petitioner had sent another request letter (Annexure P-14) to the respondent No.3 to decide his representation/appeal. As per contents of request letter (Annexure P-14), it appears that the same was written after the retirement of petitioner, which took place on 31.05.2015. It appears that request letter (Annexure P-14) has been given nomenclature of appeal dated 15.02.2016 by the respondents No.1 to 4 and it is so mentioned in para No.15 of preliminary objections of their written statement. In this view of the matter, respondents No.1 to 4 have narrated wrong facts in their written statement especially in respect of filing of statutory appeal by petitioner on 15.02.2016, whereas as per record statutory appeal was filed by the petitioner on 16.12.2013 and then respondent No.4 vide forwarding letter dated 28.01.2014 (Annexure P-13) forwarded the said appeal to respondent No.3-Appellate Authority. Admittedly, statutory appeal preferred by petitioner was never decided by respondent No.3 and faced with this situation, petitioner was constrained to take recourse to Tribunal for redressal of his

grievance, wherein he too failed on account of delay and laches, vide order dated 17.03.2016. In this scenario, it is safe to conclude that respondent No.3-Appellate Authority did not consider the statutory appeal preferred by petitioner at any point of time and in fact as per version of respondents No.1 to 4, as OA moved by the petitioner before Tribunal was dismissed on 17.03.2016, said statutory appeal has become redundant as there is no provision in the Rules, 1965, to entertain appeal once the matter has been adjudicated by the Court. Above said plea of respondents No.1 to 4 has no footing to stand and the same requires outright rejection. In view of above, it is crystal clear that statutory appeal preferred by the petitioner and that too in the year 2013 was never disposed of by the Appellate Authority (respondent No.3), which depicts inaction on the part of respondents No.1 to 4 while dealing with administrative matters.

(vi) Regarding challenge to order dated 17.03.2016 passed by Tribunal in OA, it is observed that Tribunal has dismissed the application of petitioner impugning the legality of order dated 02.12.2013 mainly on the ground that as petitioner had claimed allowance commencing from the year 28.07.1997, there was inordinate delay on the part of petitioner to seek redressal of his grievance and as such claim

being raised at belated stage was not maintainable. At this juncture, it is relevant to point out here that Tribunal has also given passing reference in respect of legality of impugned order dated 02.12.2013 and opined that since petitioner was just marking his attendance and he was not doing even an iota of work, claim of allowance raised by petitioner was rightly declined by the authorities concerned. However, as discussed above, impugned order dated 02.12.2013, is not sustainable in the eyes of law. Qua aspect of controversy that claim raised by petitioner seeking allowance and that too with effect from 28.07.1997 having been moved at belated stage is maintainable or not, it is observed that even though petitioner has taken the stand that after having suffered permanent disability to the extent of 75%, when he resumed duty on 28.07.1997, he had brought recommendations of doctor concerned to the notice of his employer to the effect that as per his physical status, he has to be assigned modified job but no action in this regard was taken at the instance of respondents. At the same time, there is nothing on the record to show that while resuming duty on 28.07.1997 petitioner had furnished any disability certificate to his employer and further asked for allowance being orthopaedically handicapped employee. It is well settled proposition of law that Court comes to the rescue

of person who is vigilant of his rights and in this scenario, one who sleeps over his rights, he has to suffer. However, a fact cannot be lost the sight that admittedly petitioner is orthopaedically handicapped person having suffered permanent disability to the extent of 75%, as is evident from disability certificates (Annexures P-4 and P-5). As discussed above, no application for grant of allowance was moved on 28.07.1997 by the petitioner to his employer, when he (petitioner) resumed duty after prolonged leave on account of injuries sustained in a accident. On the other hand, respondents in their written statement have categorically contended that application for grant of allowance was moved by the petitioner for the first time on 11.11.2011, whereas a bare perusal of documents especially Annexure-I attached with forwarding letter dated 28.01.2014 (Annexure P-13) scribed at the instance of respondent No.4, it is quite evident on the record that petitioner being orthopaedically handicapped employee having suffered disability to the extent of 75% vide his application dated 20.05.2011 having attached photocopies of disability certificates dated 07.06.1997 and 06.09.2006 had asked for allowance from his employer. In view of above mentioned admitted document of respondents No.1 to 4, it is safe to conclude that application for grant of

allowance was moved by the petitioner before the authorities concerned (respondent No.4) for the first time on 20.05.2011. A bare perusal of Government Notifications (Annexures P-6 to P-8), it is quite evident that the said Notifications have been enacted for grant of allowance to the orthopaedically handicapped employee having suffered disability and once it is crystal clear on the record that petitioner being orthopaedically handicapped employee having suffered permanent disability to the extent of 75%, is entitled to get allowance but in a given situation on account of slackness on the part of petitioner, allowance is to be given to him with effect from 20.05.2011, when for the first time he had moved application in that regard to the authorities concerned. Petitioner is entitled to get allowance with effect from 20.05.2011 till 31.05.2015, the date of his retirement. In this view of the matter, impugned order dated 17.03.2016 passed by the Tribunal cannot be sustained in the eyes of law.

10. As a sequel to above said findings, it is held that since respondents No.1 to 4 and Tribunal did not consider the claim of petitioner in right perspective, thus, impugned order dated 02.12.2013 passed by respondent No.4 as well as impugned order dated 17.03.2016 passed by Tribunal, rejecting the claim of petitioner for grant of allowance, are set aside. Resultantly, instant writ petition is partly allowed in the manner that

petitioner-Om Parkash Gupta, being orthopaedically handicapped employee having suffered permanent disability to the extent of 75%, is entitled to get transport allowance double the normal rates as per Government Notifications (Annexures P-6 to P-8) from the date of his application i.e. 20.05.2011 till 31.05.2015, the date of his retirement. Respondents No.1 to 4 are directed to calculate the allowance in the manner indicated above and the same be disbursed in favour of petitioner-Om Parkash Gupta, within three months from the date of receipt of certified copy of this judgment, failing which petitioner-Om Parkash Gupta shall be entitled to receive said allowance alongwith interest @ 9% per annum from the date of accrual of cause of action i.e. 20.05.2011 till actual realization thereof. Petition is partly allowed in above said terms.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

02.07.2019
rimpal

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No